

**Donation and License Agreement
Between the City of Milwaukee and Historic Milwaukee, Inc.**

This agreement (“Agreement”), is made and entered into as of this ____ day of _____, 201__ by and between Historic Milwaukee, Inc., a Wisconsin non-stock corporation with its principal offices located at 207 E. Michigan Street, Suite 406, Milwaukee, Wisconsin 53202 (“HMI”) and the City of Milwaukee with its principal offices located at 200 East Wells Street, Milwaukee, Wisconsin 53202, acting by and through its Department of City Development (“City”), (HMI and City collectively, the “Parties”).

WHEREAS, the City presently owns an inventory of 28 different types of posters originally published by the Department of City Development (“Posters”) featuring drawings representing Milwaukee and Milwaukee neighborhoods (“Poster Images”) (shown in Attachment A) with accompanying text on the Posters’ reverse sides (“Poster Text”); and

WHEREAS, the City owns the associated copyrights to such Poster Images; and

WHEREAS, HMI has reached an agreement with the Poster Text’s author, John Gurda regarding updated Poster Text; and

WHEREAS, HMI desires to acquire, market, and sell these Posters to generate revenue for itself; and

WHEREAS, the City desires to provide these Posters to HMI for the purpose of allowing HMI to market and sell the Posters; and

WHEREAS, HMI may desire to update the Poster Text, to produce additional copies of such Posters to sell, or produce other products bearing the Poster Images; and

WHEREAS, the City desires to provide HMI with a limited, royalty free, non-exclusive, non-transferable license to reproduce Poster Images and to use the Poster Images on other products that HMI should, from time to time, desire to market and sell; and

WHEREAS, the City desires to promote the good image of the City by promoting the historic nature of the City’s neighborhoods and believes that the marketing of the Posters, products containing Poster Images HMI will aid the City in this pursuit; and

WHEREAS, the Parties agree that this Agreement shall be subject to all current or future applicable ordinances, rules, and procedures of the City of Milwaukee, and to all obligations HMI may have in contract to the Poster Text author, John Gurda;

NOW, THEREFORE, in consideration of and fully incorporating the above-described mutual covenants and intending to be legally bound thereby, the Parties agree as follows:

1. **DONATION OF CURRENT POSTER INVENTORY.** The City will donate to HMI printed copies the Posters in the quantities detailed in Attachment B. In return for the City's donation of the Posters, HMI agrees to market and sell the Posters. HMI may retain proceeds of Poster sales to support HMI programming.

2. **LICENSE TO REPRODUCE POSTERS AND ALTERATIONS OF TEXT BY HMI.** The City grants HMI a royalty-free, non-transferable, non-exclusive license to print, market, and sell new posters containing Poster Images and Poster Text, and/or HMI's updated version of such text ("Poster License"). In return for the City's grant of the Poster License, HMI agrees to do the following:
 - A. HMI will submit Poster Text updates to, and obtain the City's written approval of, the updated text before displaying, marketing, distributing, or selling any products, including but not limited to posters, containing the updated text. The City's approval of text updates shall not be unreasonably withheld.
 - B. HMI may market the posters created or printed pursuant to the Poster License and HMI may retain proceeds of the sales to support HMI programming.
 - C. If HMI desires to use Poster Text and/or update the Poster Text and use such updates on posters or other products created pursuant to this Agreement, HMI agrees that all such text updates may only be made, used, and/or sold pursuant to HMI's agreement with the Poster Text author, John Gurda.

3. **LICENSE TO USE POSTER IMAGES ON OTHER PRODUCTS.** The City grants HMI a royalty-free, non-transferable, non-exclusive license to reproduce the Poster Images on non-poster products ("Product License"). In return for the City's grant of the Poster License, HMI agrees to do the following:
 - A. Prior to reproducing any Poster Image, HMI shall obtain design approval from the City, which approval shall not be unreasonably withheld.
 - B. HMI may place Poster Images on products such as t-shirts, coffee mugs, shopping bags, and similar items, subject to prior written approval from the City, which approval shall not be unreasonably withheld.
 - C. HMI may market the products bearing Poster Images described in the preceding paragraph (B), and HMI may retain proceeds of sale to support HMI programming.

4. **PROVISION OF POSTERS AND PRODUCTS TO CITY.** For each poster or other product created by HMI featuring a Poster Image and/or Poster Text, HMI shall provide a certain number of the posters or products to the City, free of cost, for the City's exclusive use every calendar year. This number shall be agreed upon by the City and HMI at the time HMI first markets the posters, or seeks design approval for other products. The City

may, at its discretion, decline to accept any or all of posters or products provided to the City by HMI. The City's decision to decline the acceptance of products or posters in any year does not abrogate HMI's obligation(s) to the City in any subsequent year.

5. **PRICE OF ITEMS SOLD BY HMI.** HMI may set its own prices for Posters and for items created pursuant to the Poster License and Product License, and sell the same to both wholesale and retail customers. HMI shall establish a discount price for bulk orders sold to Milwaukee neighborhood and community organizations.
6. **REVOCAION OF LICENSES.** The City may, at its sole discretion, revoke HMI's Poster License and/or Product License at any time. Upon the City's revocation of either License, the City must either (1) allow HMI one year to sell its remaining inventory products created pursuant to the Poster License or the Product License after which time HMI will destroy any unsold inventory, or, (2) purchase HMI's remaining inventory of products created pursuant to the Poster License or the Product License, at cost.
7. **ANNUAL REPORT OF SALES.** HMI will provide the City with an annual report of all of HMI's sales of Posters and items created pursuant to the Poster License or the Product License, including information about the number of each Poster and/or item sold and the sales proceeds.
8. **AUDITS AND INSPECTIONS.** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of HMI's records with respect to all matters covered by this Agreement and HMI shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits or all contracts, invoices, materials, payrolls, records or personnel, conditions of employment, and other data relating to all matters covered by this Agreement.
9. **SUBLICENSING.** HMI shall not sub-license the Poster Images without first receiving prior written approval from the City. HMI shall not sub-license the Poster Text without first receiving prior written approval of the City and fulfilling any obligations HMI may have to the author, John Gurda, pursuant to HMI's agreement with Mr. Gurda. The City may, at its discretion, refuse to provide written sub-license approval for any reason the City deems reasonable.
10. **ASSIGNABILITY.** HMI shall not assign or transfer any interest in this Agreement (whether by assignment, novation or any other manner) without the prior written approval of the City.
11. **INDEMNIFICATION.** HMI assumes full liability for all of its acts in the use of the Poster License and Product License. HMI will save and indemnify and keep harmless the City against all liabilities, judgments, costs, and expenses which may be claimed against the City in consequence of the granting of this Agreement to HMI, or which may result from the carelessness or neglect of HMI, or the agents, employees, or volunteers of HMI in any respect whatsoever. If judgment is recovered, whether in suits of law or in equity,

against the City by reason HMI's carelessness, negligence, or by acts or omissions of HMI, such persons, firms or corporations carrying out the provisions of the Agreement for HMI, HMI assumes full liability for such judgment not only as to the amount of damages, but also the cost, attorneys fees or other expenses resulting therefrom.

12. **REGULATIONS.** HMI agrees to comply with all of the requirements of all federal, state and local laws relating to or bearing upon this Agreement, the Poster License, and/or the Product License.
13. **JURISDICTION, VENUE, CHOICE OF LAW.** This Agreement shall be governed by and construed according to the laws of the State of Wisconsin. Any litigation relating to the formation, interpretation or alleged breach of this Agreement must be brought in the state and federal courts having jurisdiction in Milwaukee County, Wisconsin, and HMI consents to the jurisdiction of such courts.
14. **SALES TAX.** HMI is solely responsible for the collection and remittance of sales tax on items it sells pursuant to this Agreement, in accordance with Wisconsin State law.
15. **PUBLIC RECORDS.** Both Parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned upon the provisions of Wis. Stat. § 19.21, *et seq.* HMI acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that HMI must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years.
16. **INTEREST IN CONTRACT.** No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.
17. **DISCRIMINATION PROHIBITED.**
 - A. Consultant agrees not to discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based on affiliation with, or perceived affiliation with any of these protected categories. This requirement shall apply but not be limited to the following: tenure, terms or conditions of employment, promotion, demotion or transfer, recruitment or recruitment advertising, employment rules and policies, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. (Section 109-45 of the Milwaukee Code of Ordinances.)

- B. No person in the United States shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement. City and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.
- C. Consultant agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.*

18. MANDATORY REEVALUATION. This Agreement shall be reevaluated 3 years after the Agreement is entered into, at which time the City may continue the Agreement, negotiate revised terms of the terms of the Agreement, terminate the Agreement, and/or set a new mandatory reevaluate date.

19. ENTIRE AGREEMENT. This Agreement is the entire binding agreement and no other terms or conditions, oral or written, shall be effective or binding unless expressly agreed to in writing by the City of Milwaukee and HMI.

City of Milwaukee, Wisconsin,
by its Department of City Development.

Date: _____
Date: _____

Historic Milwaukee, Inc.

Its: _____ Date: _____

Examined and approved as to form and execution this
_____ day of _____, 2015.

Assistant City Attorney

This Agreement was drafted by the Office of the City Attorney